

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 14, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMIE BUSBY,

Plaintiff,

v.

TRANS UNION, LLC,

Defendant.

NO: 2:21-CV-251-RMP

STIPULATED PROTECTIVE
ORDER

BEFORE THE COURT is a Joint Motion for Entry of a Stipulated Protective Order, ECF No. 13. A district court may enter a protective order upon a showing of good cause. Fed. R. Civ. P. 26(c). Before issuing a stipulated protective order, a district court judge should ensure that the protective order's restrictions do not infringe on the public's general right to inspect and copy judicial records and documents. *See Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *see also Courthouse News Serv. v. Planet*, 947 F.3d 581, 589 (9th Cir. 2020) (recognizing a long-held First Amendment right of access to court proceedings and documents).

1 Having reviewed the proposed Protective Order and the record, the Court
2 finds that good cause exists to enter the parties' proposed Stipulated Protective
3 Order. Accordingly, **IT IS HEREBY ORDERED** that the parties' Joint Motion
4 for Entry of Stipulated Protective Order, **ECF No. 13**, is **GRANTED**. The
5 Protective Order in effect is set forth below.

6 1. PURPOSES AND LIMITATIONS

7 Discovery in this action is likely to involve production of confidential,
8 proprietary, or private information for which special protection may be warranted.
9 Accordingly, the parties hereby stipulate to and petition the court to enter the
10 following Stipulated Protective Order. The parties acknowledge that this agreement
11 is consistent with LCR 26(c). It does not confer blanket protection on all disclosures
12 or responses to discovery, the protection it affords from public disclosure and use
13 extends only to the limited information or items that are entitled to confidential
14 treatment under the applicable legal principles, and it does not presumptively entitle
15 parties to file confidential information under seal.

16 2. "CONFIDENTIAL" MATERIAL

17 "Confidential" material shall include the following documents and tangible
18 things produced or otherwise exchanged: documents containing Plaintiff's personal
19 information (such as credit reports), Plaintiff's medical records, information
20 prohibited from disclosure by statute, information that reveals trade secrets or
21 confidential and propriety information, research, technical, commercial or financial

1 information that the parties have maintained as confidential, medical information
2 concerning any individual, personal identifying information such as credit card
3 numbers or Social Security Numbers, non-public income tax returns, personnel or
4 employment records of a person who is not a party to the case and account records
5 of Defendant's customers, including the account(s) at issue in this litigation..

6 3. SCOPE

7 The protections conferred by this agreement cover not only confidential
8 material (as defined above), but also (1) any information copied or extracted from
9 confidential material; (2) all copies, excerpts, summaries, or compilations of
10 confidential material; and (3) any testimony, conversations, or presentations by
11 parties or their counsel that might reveal confidential material.

12 However, the protections conferred by this agreement do not cover
13 information that is in the public domain or becomes part of the public domain
14 through trial or otherwise.

15 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

16 4.1 Basic Principles. A receiving party may use confidential material that
17 is disclosed or produced by another party or by a non-party in connection with this
18 case only for prosecuting, defending, or attempting to settle this litigation.
19 Confidential material may be disclosed only to the categories of persons and under
20 the conditions described in this agreement. Confidential material must be stored and
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1 maintained by a receiving party at a location and in a secure manner that ensures that
2 access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the designating party, a
5 receiving party may disclose any confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as
7 employees of counsel to whom it is reasonably necessary to disclose the information
8 for this litigation;

9 (b) the officers, directors, and employees (including in house
10 counsel) of the receiving party to whom disclosure is reasonably necessary for this
11 litigation, unless the parties agree that a particular document or material produced is
12 for Attorney’s Eyes Only and is so designated;

13 (c) experts and consultants to whom disclosure is reasonably
14 necessary for this litigation and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A);

16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the
18 duplication of confidential material, provided that counsel for the party retaining the
19 copy or imaging service instructs the service not to disclose any confidential material
20 to third parties and to immediately return all originals and copies of any confidential
21 material;

1 (f) during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
4 party or ordered by the court. Pages of transcribed deposition testimony or exhibits
5 to depositions that reveal confidential material must be separately bound by the court
6 reporter and may not be disclosed to anyone except as permitted under this
7 agreement;

8 (g) the author or recipient of a document containing the information
9 or a custodian or other person who otherwise possessed or knew the information.

10 (h) A party may supplement the “confidential” mark (see section 2)
11 with the words “attorney’s eyes only,” in which case a confidential document so
12 designated may not be revealed to another party. The parties agree that Plaintiff, his
13 attorneys and staff and Plaintiff’s experts may review documents designated as
14 “attorney’s eyes only.”

15 4.3 Filing Confidential Material. Before filing confidential material or
16 discussing or referencing such material in court filings, the filing party shall confer
17 with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to
18 determine whether the designating party will remove the confidential designation,
19 whether the document can be redacted, or whether a motion to seal or stipulation and
20 proposed order is warranted. During the meet and confer process, the designating
21 party must identify the basis for sealing the specific confidential information at issue,

1 and the filing party shall include this basis in its motion to seal, along with any
2 objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the
3 procedures that must be followed and the standards that will be applied when a party
4 seeks permission from the court to file material under seal. A party who seeks to
5 maintain the confidentiality of its information must satisfy the requirements of Local
6 Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to
7 satisfy this requirement will result in the motion to seal being denied, in accordance
8 with the strong presumption of public access to the Court's files.

9 **5. DESIGNATING PROTECTED MATERIAL**

10 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

11 Each party or non-party that designates information or items for protection under
12 this agreement must take care to limit any such designation to specific material that
13 qualifies under the appropriate standards. The designating party must designate for
14 protection only those parts of material, documents, items, or oral or written
15 communications that qualify, so that other portions of the material, documents,
16 items, or communications for which protection is not warranted are not swept
17 unjustifiably within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations
19 that are shown to be clearly unjustified or that have been made for an improper
20 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
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1 to impose unnecessary expenses and burdens on other parties) expose the
2 designating party to sanctions.

3 If it comes to a designating party's attention that information or items that it
4 designated for protection do not qualify for protection, the designating party must
5 promptly notify all other parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, disclosure or discovery material that qualifies for protection
9 under this agreement must be clearly so designated before or when the material is
10 disclosed or produced.

11 (a) Information in documentary form: (*e.g.*, paper or electronic
12 documents and deposition exhibits, but excluding transcripts of depositions or other
13 pretrial or trial proceedings), the designating party must affix the word
14 "CONFIDENTIAL" to each page that contains confidential material. If only a
15 portion or portions of the material on a page qualifies for protection, the producing
16 party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
17 markings in the margins).

18 (b) Testimony given in deposition or in other pretrial proceedings:
19 the parties and any participating non-parties must identify on the record, during the
20 deposition or other pretrial proceeding, all protected testimony, without prejudice to
21 their right to so designate other testimony after reviewing the transcript. Any party

1 or non-party may, within thirty days after receiving the transcript of the deposition
2 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,
3 as confidential. If a party or non-party desires to protect confidential information at
4 trial, the issue should be addressed during the pre-trial conference.

5 (c) Other tangible items: the producing party must affix in a
6 prominent place on the exterior of the container or containers in which the
7 information or item is stored the word “CONFIDENTIAL.” If only a portion or
8 portions of the information or item warrant protection, the producing party, to the
9 extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the designating party’s right to secure protection under this agreement for such
13 material. Upon timely correction of a designation, the receiving party must make
14 reasonable efforts to ensure that the material is treated in accordance with the
15 provisions of this agreement.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a
18 designation of confidentiality at any time. Unless a prompt challenge to a
19 designating party’s confidentiality designation is necessary to avoid foreseeable,
20 substantial unfairness, unnecessary economic burdens, or a significant disruption or
21 delay of the litigation, a party does not waive its right to challenge a confidentiality

1 designation by electing not to mount a challenge promptly after the original
2 designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any
4 dispute regarding confidential designations without court involvement. Any motion
5 regarding confidential designations or for a protective order must include a
6 certification, in the motion or in a declaration or affidavit, that the movant has
7 engaged in a good faith meet and confer conference with other affected parties in an
8 effort to resolve the dispute without court action. The certification must list the date,
9 manner, and participants to the conference. A good faith effort to confer requires a
10 face-to-face meeting or a telephone conference.

11 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
12 court intervention, the designating party may file and serve a motion to retain
13 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
14 5(g), if applicable). The burden of persuasion in any such motion shall be on the
15 designating party. Frivolous challenges, and those made for an improper purpose
16 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
17 expose the challenging party to sanctions. All parties shall continue to maintain the
18 material in question as confidential until the court rules on the challenge.

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1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that party must:

6 (a) promptly notify the designating party in writing and include a
7 copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or
9 order to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this agreement. Such notification shall include a copy
11 of this agreement; and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the designating party whose confidential material may be affected.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 confidential material to any person or in any circumstance not authorized under this
17 agreement, the receiving party must immediately (a) notify in writing the designating
18 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
19 unauthorized copies of the protected material, (c) inform the person or persons to
20 whom unauthorized disclosures were made of all the terms of this agreement, and
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(d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

1 The confidentiality obligations imposed by this agreement shall remain in
2 effect until a designating party agrees otherwise in writing or a court orders
3 otherwise.

4 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
5 Order and provide copies to counsel.

6 **DATED** December 14, 2021.

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8 *s/ Rosanna Malouf Peterson*
9 ROSANNA MALOUF PETERSON
10 Senior United States District Judge
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